

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

VOLKSWAGEN GROUP OF AMERICA, INC.
Employer

and

Case 10-RC-162530

UNITED AUTO WORKERS, LOCAL 42
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.¹

¹ We agree with the Regional Director that the petitioned-for unit satisfies the standard set forth in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), enfd. sub nom. *Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013), and that the Employer failed to meet its burden of demonstrating that the additional employees it seeks to include share an "overwhelming community of interest" with the petitioned-for unit. The employees in the petitioned for-unit are readily identifiable as a group, as it consists of all maintenance employees employed by the Employer at its Chattanooga, Tennessee facility. See *DPI Secuprint, Inc.*, 362 NLRB No. 172 (2015) ("readily identifiable as a group" means simply that the description of the unit is sufficient to specify the group of employees the petitioner seeks to include"). They also share a community of interest under the traditional criteria—similar job functions; shared skills, qualifications, and training; supervision separate from the production employees'; wages different from the production employees'; hours and scheduling different from production employees'; other unique terms and conditions of employment (e.g., expectation to work on production shutdown days and to work through scheduled breaks and lunch if the need arises); and a human resources manager dedicated solely to maintenance employees. We find that these factors substantially outweigh the fact that the Employer assigns the maintenance employees to three separate departments. See *Bergdorf Goodman*, 361 NLRB No. 11, slip op. at 3 (2014) ("petition's departure from any aspect of the Employer's organizational structure might be mitigated or outweighed by other community-of-interest factors").

For many of those same reasons, the Employer failed to demonstrate that the production employees share an "overwhelming community of interest" with maintenance employees, such that there is "no legitimate basis upon which to exclude certain employees from" the larger unit because the traditional community-of-interest factors "overlap almost completely." *Specialty Healthcare*, supra at 944. As described above, many of the traditional community-of-interest

KENT Y. HIROZAWA, MEMBER

LAUREN McFERRAN, MEMBER

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factors differentiate the production employees from the maintenance employees; it is impossible to say that the factors “overlap almost completely.” The Board’s decisions in *Capri Sun, Inc.*, 330 NLRB 1124 (2000), and *Ore-Ida Foods*, 313 NLRB 1016 (1994) further support our conclusion. In *Capri Sun*, the employer maintained a facility where, similar to the Employer here, it divided its operations into several different departments to which both production and maintenance employees were assigned. The Board found that the maintenance employees constituted an appropriate bargaining unit. Similarly, in *Ore-Ida*, the employer divided its production operations among several different departments, each with its own maintenance employees with the skills necessary to maintain the equipment of that department. Again, the Board found a maintenance-only unit appropriate. The same factors the Board relied on in those cases, including the limited interchange between maintenance and production workers, compel the conclusion that the petitioned-for unit in this case is an appropriate unit. See *Overnite Transportation Co.*, 322 NLRB 723 (1996) (the Act does not require a petitioner to seek to represent employees in the most appropriate unit possible, only in an appropriate unit).

The Employer’s requests for a stay of certification and oral argument are also denied.

Member Miscimarra, dissenting:

Unlike my colleagues, I would grant review because I believe the Regional Director's Decision and Direction of Election gives rise to substantial issues regarding the potential inappropriateness of the petitioned-for bargaining unit, which consists exclusively of maintenance employees and excludes production and other employees. Among other things, I believe substantial issues exist based on the following considerations, which in my opinion warrant review by the Board: (1) there is no centralized maintenance department;² (2) the Employer's facility includes three distinct departments (body weld, paint, and assembly), each of which includes both production and maintenance employees; (3) the maintenance employees in one department have little or no interaction or interchange with maintenance employees in other departments; (4) there is no common maintenance supervisor having responsibility over maintenance employees across the three combined production-and-maintenance departments; (5) the maintenance employees in any one of the combined production-and-maintenance departments work in a different physical location within the facility than the maintenance employees in the other combined production-and-maintenance departments; (6) there are substantial differences in the equipment used in each combined production-and-maintenance department, which means the job duties and work functions of maintenance employees in a particular department relate to the specific equipment used by production employees in that department; (7) to the extent that similarities exist among maintenance employees across departments, many of the same similarities exist among production employees across departments (e.g., hiring procedures and orientation, applicable policies and handbook provisions, payroll procedures, bonus programs, benefit plans, peer review, and potential bargaining history); and (8) to the extent that dissimilarities exist between production employees and maintenance employees, many of the same dissimilarities exist between the maintenance employees who work in one department and the maintenance employees who work in the other departments (e.g., different supervisors, different operations, different equipment, and different job duties and work functions).

As I have stated elsewhere, I disagree with the Board's standard in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), enfd. sub nom. *Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013), which in my view "affords too much deference to the petitioned-for unit in derogation of the mandatory role that Congress requires the Board to play" when evaluating bargaining-unit issues, contrary to Section 9(a), 9(b) and 9(c)(5) of the Act.³ However, even if one applies *Specialty Healthcare*, I believe substantial

² According to the Decision and Direction of Election, the Employer uses the terms "shop" and "department" interchangeably when referring to its distinct organizational groups or functions.

³ See *Macy's, Inc.*, 361 NLRB No. 4, slip op. at 25-32 (2014) (Member Miscimarra, dissenting); Sec. 9(b) ("The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the

questions warrant Board review regarding whether the petitioned-for maintenance-only bargaining unit constitutes an impermissible fractured unit that departs from the Employer's organizational structure, see *Odwalla, Inc.*, 357 NLRB 1608, 1611-1613 (2011), and whether an overwhelming community of interest warrants including production and/or other employees in any bargaining unit, *Specialty Healthcare*, 357 NLRB at 945-946.

Accordingly, I respectfully dissent from my colleagues' denial of review.

PHILIP A. MISCIMARRA, MEMBER

purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.”); *American Hospital Assn. v. NLRB*, 499 U.S. 606, 611 (1991) (“Congress chose not to enact a general rule that would require plant unions, craft unions, or industry-wide unions for every employer in every line of commerce, but also chose not to leave the decision up to employees or employers alone. Instead, the decision ‘in each case’ in which a dispute arises is to be made by the Board.”); *id.* at 614 (Section 9(b) requires “that the Board decide the appropriate unit in every case in which there is a dispute.”).